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GARBER V. BRESEE & SONS.—Decided at Richmond, January 12, 1899.—*Buchanan, J.* Absent, *Cardwell* and *Riely, JJ*:

1. FALSE REPRESENTATIONS—*Opinions—Facts—Case at bar—Insurance.* A contract procured by the false representation of an agent is not voidable at the option of the party deceived, where it appears that the agent had no authority to bind his principal as to the truth of the representation, and the representation was the mere expression of an opinion, and did not amount to an engagement or undertaking that the fact was as represented. In the case at bar the plaintiff in error was induced to take out further insurance in a company on the representation of an agent of the company that the company would pay him the cash surrender value of a policy which he already held in the company. This representation was the expression of an opinion, and not the statement of a fact.

HASHER'S ADM'R AND OTHERS V. HASHER.—Decided at Richmond, January 12, 1899.—*Keith, P.* Absent, *Cardwell* and *Riely, JJ*:

1. STATUTE OF LIMITATION—*Attorney in fact and principal—Trust.* In the absence of fraudulent concealment on the part of an attorney in fact, whose authority is simply to collect and pay over money, the principal's cause of action against his attorney for failure to make such payment arises at the date of the collection by the attorney, or at least in a reasonable time thereafter. There is no trust relation between the parties, and the mere fact that a part of the money was collected several years after the first collection, is no evidence of a continuing trust, and does not change the original character of the relation of the parties.

COMMERCIAL BANK V. CABELL.—Decided at Richmond, January 12, 1899.—*Harrison, J.* Absent, *Cardwell* and *Riely, JJ*:

1. INJUNCTION AGAINST PROCEEDING AT LAW—*Set-off—Partnership—Insolvency—Inadequate remedy.* Ordinarily a court of equity will not enjoin an action at law at the instance of the defendant to enable him to set-off an alleged balance due him on partnership account, as a settlement may show a balance against him instead of in his favor. But where it is certain that the balance will be in favor of the complainant, though the amount thereof is unascertained, and the debtor partner is insolvent and the complainant would be otherwise without remedy to get the benefit of his offsets, equity will stay the proceeding at law and afford relief. In such case equity is the proper forum to settle the accounts, and the remedy at law is not adequate.

2. ASSIGNMENT BY HUSBAND OF DECEASED WIFE'S CHOSES—*What passes—Set-offs by maker against husband and his assignee.* An assignment by a surviving husband of a note which was the property of his deceased wife is a violation of the rights of her personal representative and amounts to no more than an order on him, when appointed, in favor of the assignee, for whatever interest he may have in its proceeds. The husband, as sole distributee of the wife, is entitled to net proceeds of the note after the payment of debts and costs of administration, but, if, at the time of the assignment, he is indebted to the maker, his assignee can stand on no higher ground than he does, and the maker is entitled to set-off such indebtedness against his liability on the note.

3. COLLATERALS—*Substitution of forged collaterals—Return of genuine to owner—Who has title.* If a note of a third person payable to a wife be loaned by her to her husband for the purpose of enabling him to pledge it as collateral for a loan, and he so pledges it, and, after the lapse of two years, renews the loan and substitutes a forged note for the genuine and returns the genuine to his wife, if it appears that he did not act as her agent, nor with her knowledge or acquiescence in the substitution, and that she was without fault or negligence in the premises, her title will be deemed superior to that of the former pledgee.

CANNON V. COMMONWEALTH.—Decided at Richmond, January 12, 1899.—*Cardwell, J.* Absent, *Riely, J.*:

1. CRIMINAL LAW—*Recognizance—Uncertainty—Sec. 4093 of Code.* A recognizance in a criminal case with condition to appear before the court on the first day of its next term, and “not depart without the leave thereof, to answer the judgment of this court,” is not in compliance with section 4093 of the Code, and is void for uncertainty.

2. CRIMINAL LAW—*Recognizance—Essentials of.* A recognizance should show on its face that the condition it contains is to do some act, for the performance of which such an obligation may be properly taken, and that the court or officer before whom it is taken has authority to act in cases of that general character.

3. PLEADING—*Scire facias on a forfeited recognizance—Demurrer.* Upon a demurrer to a *scire facias* sued out on a forfeited recognizance, the entry of default cannot be looked to in aid of the recognizance. The recognizance must stand alone upon a demurrer.